



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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JAN 21 2009

MEMORANDUM FOR DIRECTOR, DEFENSE CRIMINAL INVESTIGATIVE
SERVICE
COMMANDER, UNITED STATES ARMY CRIMINAL
INVESTIGATION COMMAND
DIRECTOR, NAVAL CRIMINAL INVESTIGATIVE
SERVICE
COMMANDER, AIR FORCE OFFICE OF SPECIAL
INVESTIGATIONS

SUBJECT: Use of DoD IG Subpoenas in Support of Non-Fraud Related Investigations

On July 31, 2008, I signed a policy authorizing the issue of Inspector General subpoenas in support of certain DoD non-fraud related investigations. This Memorandum supersedes that policy and is being issued to: (1) reflect updates to several punitive articles contained in the 2008 revisions to the Uniform Code of Military Justice (UCMJ), and (2) include "Death investigations conducted by MCIOs" as an additional category under the "Particular Crimes Test".

Accordingly, we will continue to consider requests to issue subpoenas in support of DoD non-fraud related (general crimes) criminal investigations when such requests satisfy criteria under both the "DoD Nexus Test" (Attachment 1) and the "Particular Crimes Test" (Attachment 2).

Procedures for requesting subpoenas may be found on our Web Site (www.dodig.mil).

Gordon S. Heddell
Gordon S. Heddell
Acting

Attachments:
As stated

DoD IG Subpoenas in Support of Non-Fraud Related Investigations

DOD NEXUS

Is there sufficient DoD nexus to the crime at issue to warrant the DoD IG's involvement in the investigation? Criteria: The Defense Criminal Investigation Organization (DCIO) submitting the request has investigative authority¹ for the crime(s) under investigation and, if the investigation is being conducted jointly with another law enforcement organization, the DCIO has also been designated as the "lead investigative organization" for that joint investigation.²

¹ For the purpose of this memorandum, the phrase "has investigative authority" means the DCIO has the legal authority to conduct the investigation in question pursuant to its own regulations and investigative authority has not been specifically reserved to another agency or entity.

² For example, if a DCIO is supporting local police in an investigation wherein a Service member's car was allegedly stolen from his off-base residence, we would not issue a subpoena for records of the auto dealership where the car was purchased, but would defer to the local police as the "lead" investigative agency.

DoD IG Subpoenas in Support of Non-Fraud Related Investigations

PARTICULAR CRIMES

Is the particular crime at issue of such a nature and/or such concern to DoD as to warrant the DoD IG's involvement in the investigation? Criteria: At least one of the crimes under investigation is an offense listed below.

OFFENSE	U.S.C. CITATION	UCMJ VIOLATION
Murder	18 U.S.C. § 1111	UCMJ Article 118
Manslaughter / Death or injury to an unborn child	18 U.S.C. § 1112	UCMJ Article 119 UCMJ Article 119a
Attempts to commit murder or manslaughter	18 U.S.C. § 1113	UCMJ Article 80
Negligent homicide		UCMJ Article 134 (Homicide, negligent)
Other death investigations conducted by MCIOs		
Kidnapping	18 U.S.C. § 1201; 18 U.S.C. § 875	UCMJ Article 134 (Kidnapping)
Peonage, slavery and trafficking in persons	18 U.S.C. Chapter 77	UCMJ Article 133 UCMJ Article 134
Robbery ³	18 U.S.C. § 2111	UCMJ Article 122
Bomb threat or hoax	18 U.S.C. § 875	UCMJ Articles 134
Arson or aggravated arson	18 U.S.C. § 81	UCMJ Article 126
Unlawful acts involving a firearm	18 U.S.C. Chapter 44	
Maiming	18 U.S.C. § 114	UCMJ Article 124
Riot	18 U.S.C. § 2101	UCMJ Article 116
Drugs – Unlawful manufacture of, importation of, or trafficking in, a controlled substance ⁴	21 U.S.C. §§ 841-843	UCMJ Article 112

³ Only includes offenses where a firearm (as defined in the Commentary, Applicable Notes 1(e) to §1B1.1 of the Federal Sentencing Guidelines (18 U.S.C. Appendix §1B1.1) was used in the commission of the crime. Restrictions apply to both Title 18 and UCMJ offenses.

⁴ Only if the quantity of the controlled substance/drug (defined as a substance identified as a controlled substance in §2D1.1 of the Federal Sentencing Guidelines (18 U.S.C. Appendix §2D1.1) involved is, or is reasonably suspected to be, equal to or in excess of the drug quantity specified for Base Offense Level 16 or the Drug Quantity Table found at §2D1.1 of the Federal Sentencing Guidelines (18 U.S.C. Appendix §2D1.1). Restrictions apply to both Title 18 and UCMJ offenses.

DoD IG Subpoenas in Support of Non-Fraud Related Investigations

PARTICULAR CRIMES (Continued)

Is the particular crime at issue of such a nature and/or such concern to DoD as to warrant the DoD IG's involvement in the investigation? Criteria: At least one of the crimes under investigation is an offense listed below.

OFFENSE	U.S.C. CITATION	UCMJ VIOLATION
Assault with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking	18 U.S.C. Chapter 7	UCMJ Article 120 UCMJ Article 134
Assault in which grievous bodily harm is intentionally inflicted	18 U.S.C. Chapter 7	UCMJ Article 128
Firearm, discharging---willfully, under such circumstances as to endanger human life		UCMJ Article 134
Sexual assault, abuse, or exploitation / Domestic violence and stalking	18 U.S.C. Chapter 109A 18 U.S.C. Chapter 110 18 U.S.C. §§ 2261, 2261A, 2262	UCMJ Article 120 UCMJ Article 120a UCMJ Article 125
Terrorism	18 U.S.C. Chapter 113B	
Conspiracy to commit any of the above offenses	18 U.S.C. §§ 371-373	UCMJ Article 81